

UNITED STATES DISTRICT COURT
FILED

NORTHERN DISTRICT OF CALIFORNIA

2009 SEP 23 A 11:25

SAN JOSE DIVISION

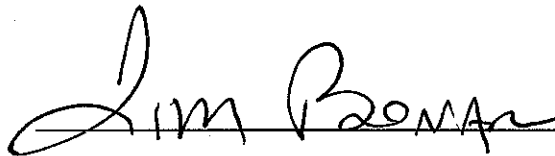
RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

THE UNITED STATES OF AMERICA

vs.

SETH SUNDBERGE-filing

INDICTMENT

COUNT ONE: 18 U.S.C. § 1341 - Mail FraudCOUNT TWO: 26 U.S.C. § 7206(1) - Fraud and False Statement in Tax ReturnCOUNT THREE: 18 U.S.C. § 287 - False and Fraudulent Claims*A true bill.*

Foreperson

Filed in open court this 23 day of Sept

A.D. 2009


UNITED STATES MAGISTRATE JUDGE

Bail. \$ NO process

ORIGINAL

JOSEPH P. RUSSONIELLO (CSBN #4332)
United States Attorney

FILED

2009 SEP 23 A 11: 25

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

SETH SUNDBERG,

Defendant.

CR - 09 00928

VIOLATIONS: 18 U.S.C. § 1341 – Mail
Fraud; 26 U.S.C. § 7206(1) – False
Statement on Tax Return; 18 U.S.C. § 287 –
False Claim Against the United States

SAN JOSE VENUE

INDICTMENT

The Grand Jury charges:

The Scheme and Artifice to Defraud

At all times relevant to this Indictment:

1. Defendant Seth Sundberg (“Sundberg”) resided in San Carlos, California.
2. On or about April 14, 2009, Sundberg signed under the penalties of perjury and filed a Form 1040 Individual Income Tax Return for the 2008 tax year with the United States Department of Treasury, Internal Revenue Service (“IRS”).
3. On that 2008 income tax return, Sundberg made the following false statements, among others:
 - a. in Schedule B (Interest and Ordinary Dividends), Sundberg claimed to have received \$5,732,580 in taxable “original issue discount” (“OID”) interest income;

b. also in Schedule B, Sundberg claimed to have paid \$5,732,441 in tax as a result of that purported OID income;

c. in box 71 of the Form 1040, Sundberg claimed to have made total tax payments to the IRS of \$5,087,059;

d. in box 73a of the Form 1040, Sundberg claimed that he was owed a refund from the IRS of \$5,084,010.

4. As a result of the false statements and claims he made in his 2008 tax return, on or about May 29, 2009 the IRS mailed Sundberg a refund check in the amount of \$5,083,609.25.

COUNT ONE: (18 U.S.C. § 1341 - Mail Fraud)

5. Paragraphs 1 through 4 are realleged and incorporated as if fully set forth here.

6. On or about May 29, 2009, in the Northern District of California, and elsewhere, the defendant,

SETH SUNDBERG,

having devised and intended to devise a scheme and artifice (A) to defraud as to a material matter, and (B) to obtain money by means of materially false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice and attempting so to do, did knowingly cause to be delivered by United States mail a federal income tax refund check;

All in violation of Title 18, United States Code, Section 1341.

COUNT TWO: (26 U.S.C. § 7206(1) - Fraud and False Statement in Tax Return)

7. Paragraphs 1 through 4 are realleged and incorporated as if fully set forth here.

8. On or about April 14, 2009, in the Northern District of California, the defendant,

SETH SUNDBERG,

did willfully make and subscribe a U.S. Individual Income Tax Return which he verified by a written declaration that it was made under the penalties of perjury, and which he did not believe to be true and correct as to every material matter, in violation of Title 26, United States Code, Section 7206(1).

//

COUNT THREE: (18 U.S.C. § 287 - False or Fraudulent Claims)

9. Paragraphs 1 through 4 are realleged and incorporated as if fully set forth here.

10. On or about April 14, 2009, in the Northern District of California, the defendant,
SETH SUNDBERG,

did make and present a claim upon and against the United States and a department and agency thereof, knowing at the time he made the claim that it was false, fictitious, and fraudulent, in violation of Title 18, United States Code, Section 287.

FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(D)(v) and 28 U.S.C. § 2461(c) –
Forfeiture of Proceeds of Mail Fraud)

11. The factual allegations contained in Count 1 of this Indictment are re-alleged and by this reference fully incorporated here for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 981(a)(1)(D)(v) and 28 U.S.C. 2461(c).

12. Upon a conviction of the offense alleged in Count 1, the defendant,

SETH SUNDBERG,

shall forfeit to the United States all property, constituting and derived from proceeds traceable to said offense, including but not limited to the following property:

(a) **Money Judgment:** a sum of money equal to \$5,083,609, representing the gross proceeds obtained as a result of the offense.

(b) **Cash, Currency, and Monetary Instruments:**

1. \$322,000 in cashier's checks recovered from Seth Sundberg on September 9, 2009.

2. \$117,473 in cash recovered from Seth Sundberg on September 9, 2009.

3. \$75,729 in gold and silver coins recovered from Seth Sundberg on September 9, 2009.

13. If any of said property, as a result of any act or omission of the defendant –

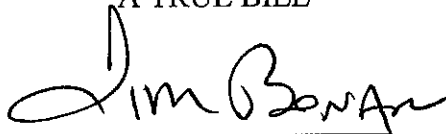
(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to or deposited with, a third person;

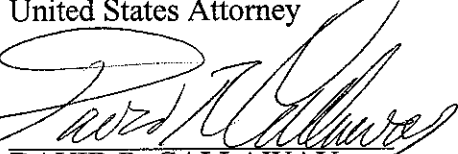
(c) has been placed beyond the jurisdiction of the Court;
(d) has been substantially diminished in value; or
(e) has been commingled with other property which cannot be subdivided without difficulty;
any and all interest defendant has in other property shall be vested in the United States and forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c) and Rule 32.2 of the Federal Rules of Criminal Procedure.

DATED:

A TRUE BILL


FOREPERSON

JOSEPH P. RUSSONIELLO
United States Attorney



DAVID R. CALLAWAY
Chief, San Jose Branch Office

(Approved as to form:)


AUSA Schenk

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☒ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING

 Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA
OFFENSE CHARGED

18 U.S.C. § 1341 - Mail Fraud; 26 U.S.C. § 7206(1) - False Statement on Tax Return; 18 U.S.C. § 287 - False Claim Against the United States

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

 PENALTY:
 See Attachment

 RICHARD W. WIERING
 CLERK
 U.S. DISTRICT COURT
 NO. DIST. OF CA. S.J.

CR-09 00928 JF PVT
PROCEEDING
 Name of Complainant Agency, or Person (& Title, if any)
 Internal Revenue Service

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a re prosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a pending case involving this same defendant

☒ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

 SHOW
 DOCKET NO.

 MAGISTRATE
 CASE NO.

09-70796-RS

 Name and Office of Person
 Furnishing Information on
 THIS FORM

JOSEPH P. RUSSONIELLO

☒ U.S. Att'y ☐ Other U.S. Agency

 Name of Asst. U.S. Att'y
 (if assigned)

JEFFREY B. SCHENK

DEFENDANT - U.S.

SETH SUNDBERG

DISTRICT COURT NUMBER

DEFENDANT**IS NOT IN CUSTODY**

- 1) ☐ Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) ☒ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges
- } ☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

 Has detainer
 been filed?

☐ Yes
☐ No

 If "Yes"
 give date
 filed

**DATE OF
 ARREST**

Month/Day/Year

Or... if Arresting Agency & Warrant were not

**DATE TRANSFERRED
 TO U.S. CUSTODY**

Month/Day/Year

☐ This report amends AO 257 previously submitted
ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**
☐ SUMMONS ☒ NO PROCESS*

☐ WARRANT Bail Amount:

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

United States v. Seth Sundberg
Maximum Penalties

18 U.S.C. § 1341 – Mail Fraud

10 years imprisonment
3 years Supervised Release
\$250,000 fine
\$100 Special Assessment Fee

26 U.S.C. § 7206(1) – False Statement on Tax Return

3 years imprisonment
1 year Supervised Release
\$100,000 fine (plus costs of prosecution)
\$100 Special Assessment Fee

18 U.S.C. § 287 – False Claim Against the United States

5 years imprisonment
3 years Supervised Release
\$250,000 fine (or twice the value of the gross gain or loss)
\$100 Special Assessment